THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.8442 OF 2006

Dated 12-04-2007

Between:

M/s Andhra Expressway Limited …Petitioner

And

State of Andhra Pradesh
Rep. By its Principal Secretary
(Revenue) CT and 8 others …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.8442 OF 2006

O R D E R ***(Per the Hon'ble Sri Justice Bilal Nazki):***

Heard learned counsel for the petitioner and the learned Special Standing Counsel for Commercial Taxes. None appears for respondent Nos.2 and 5.

The main grievance of the petitioner is that he is not liable to pay any tax though he is treated as a Contractor, as even according to the Department all the works have been given by him to a sub-contractor.

We had asked the learned Special Standing Counsel for Commercial Taxes to get instructions in the matter. He has also filed a counter-affidavit.

There is no dispute to the fact that the Commercial Tax Officer has already initiated assessment proceedings and completed the assessments as against the sub-contractor. However, the learned Special Standing Counsel for Commercial Taxes submits that although the final assessments against the sub-contractor have been made and to some extent the tax has been recovered, a part of the tax has not been paid by the sub-contractor.

Since admittedly, there is no assessment against the petitioner, therefore, recoveries of any amounts cannot be made from him.

In this view of the matter, the writ petition is allowed and the impugned action of the National Highways Authority of India-the second respondent to recover the tax from the petitioner is set aside. However, the Commercial Tax Officer shall be at liberty to recover any tax due from any assessee. The amounts deducted in pursuance of the order of this Court dated 25-04-2006 may be refunded to the petitioner. No order as to costs.

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(Bilal Nazki,J)

Dated 12th April, 2007

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(Nooty Ramamohana Rao,J)

Note: Issue C.C within one week
(b/o)
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